

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

EVERETT L. McCOY,

Plaintiff,

No. CIV S-01-1218 DFL GGH P

vs.

CAL TERHUNE, et al.,

Defendants.

ORDER

Pending before the court are plaintiff's March 13, 2006, and March 20, 2006, requests for extensions of time to oppose defendants' summary judgment motion. The background to these requests is as follows.

On September 7, 2005, defendants filed a summary judgment motion. On October 21, 2005, plaintiff filed a request to stay proceedings so that he could conduct discovery. Although defendants opposed plaintiff's motion, they agreed to provide plaintiff with the bulk of the requested discovery. Accordingly, on December 13, 2005, the court denied plaintiff's motion to stay proceedings, ordered defendants to provide plaintiff with the discovery within thirty days, and ordered plaintiff's opposition to the summary judgment motion due within sixty days.

On December 27, 2005, plaintiff filed a request for extension of time to file a request for reconsideration of the December 13, 2005, order. On January 10, 2006, the court

1 ordered plaintiff's request for reconsideration due on or before January 19, 2006. Plaintiff filed  
2 his request for reconsideration which is pending before the district court.

3 On February 13, 2006, plaintiff filed a request for extension of time to file his  
4 opposition to defendants' summary judgment motion. On February 28, 2006, the court ordered  
5 plaintiff's opposition due within fourteen days. On March 13, 2006, plaintiff filed one of the  
6 pending requests for extension of time. In this request, plaintiff stated that he could not file his  
7 opposition because his typewriter had been confiscated as well as some of his legal documents.  
8 On March 22, 2006, defendants filed an opposition to plaintiff's March 13, 2006, request.

9 In the March 20, 2006, request for extension of time, plaintiff stated that his  
10 typewriter had been returned. Plaintiff claimed that on March 10, 2006, he finished his  
11 opposition and gave it to prison officials to be copied. On March 14, 2006, Law Librarian  
12 McDonald returned the opposition to plaintiff, without copies, in a manila envelope that was wet  
13 from the rain. Law Librarian McDonald then told plaintiff that she would try to make the copies  
14 and took plaintiff's opposition. Plaintiff had not received the opposition back as of March 16,  
15 2006. Plaintiff also stated that prison officials confiscated his typewriter once they realized it had  
16 a memory capacity. Plaintiff stated that his typewriter memory contained his opposition.

17 The court shares defendants' frustration with plaintiff's failure to file his  
18 opposition. However, plaintiff claims that the law librarian took his opposition and did not  
19 return it. The court is also troubled that prison officials confiscated plaintiff's typewriter, after  
20 returning it, which contained plaintiff's opposition in the memory.

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1           Accordingly, IT IS HEREBY ORDERED that within fifteen days of the date of  
2 this order, defendants shall inform the court whether the law librarian returned plaintiff's  
3 opposition to him or whether plaintiff was granted access to his typewriter in order to print out  
4 his opposition.

5 DATED: 4/4/06

/s/ Gregory G. Hollows

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GREGORY G. HOLLOWS  
UNITED STATES MAGISTRATE JUDGE

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